

FEDERAL ELECTION COMMISSION

MUR 6054 PROBABLE CAUSE HEARING

Thursday, December 9, 2010

999 E Street, N.W.

9th Floor Meeting Room

Washington, D.C.

**JARDIM REPORTING ASSOCIATES
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COMMISSION MEMBERS:

MATTHEW S. PETERSEN, Chairman

CYNTHIA L. BAUERLY, Vice Chairman

CAROLINE C. HUNTER, Commissioner

ELLEN L. WEINTRAUB, Commissioner

STEVEN T. WALTHER, Chairman

ALSO PRESENT:

CHRISTOPHER HUGHEY, General Counsel

ALEC PALMER, Acting Staff Director

WITNESSES:

CHRISTOPHER DELACY, ESQ.

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P R O C E E D I N G S

(11:41 a.m.)

CHAIRMAN PETERSEN: This session of the Federal Election Commission will come to order. This is a probable cause hearing on MUR 6054.

We have William McGinley on behalf of the Vern Buchanan For Congress and Christopher DeLacy on behalf of Vernon Buchanan.

Respondent's counsel will have 20 minutes for an opening statement and you may divide that between yourself as you see fit and you may also reserve some of that time to make a closing statement, if you so choose. The respondent's counsel should inform the Chair at the beginning of the hearing how much time they would like to reserve for a closing statement.

After the respondents has made an opening statement the Commission will have an opportunity to ask questions of the respondents, following which the General Counsel and the Staff Director may also ask questions.

We are getting off to a little bit later

1 start than we originally hoped. It will be roughly
2 an hour. Nothing mandates that is the case. If
3 there are no other questions, we can end early.

4 I don't know who of you would like to go
5 first, but you may present your opening statement.

6 Mr. McGinley?

7 MR. MCGINLEY: Chairman Petersen, Vice Chair
8 Bauerly, Commissioners, thank you for the opportunity
9 to discuss MUR 6045 with you today. My name is Bill
10 McGinley and I have the privilege of representing
11 Vern Buchanan for Congress. With me is Christopher
12 DeLacy of Holland & Knight, who represents
13 Congressman Buchanan.

14 What has transpired over the last few days
15 demonstrates why this case never should have gotten
16 this far. All of the exculpatory information
17 disclosed by the OGC in the last 48 hours has been
18 requested by us multiple times during this matter.
19 This is now the second time in as many days that we
20 have received previously undisclosed exculpatory
21 evidence. This course of events, unfolding the
22 morning of the Probable Cause Hearing is consistent

1 with the sequence of events in this matter. This is
2 one of the reasons why this matter must be dismissed.

3 I will discuss the following topics during
4 my opening statement: Number one, the exculpatory
5 evidence absent from the General Counsel's brief and
6 the exculpatory information made available to us in
7 the last 48 hours; number two, the OGC's
8 miacharacterization of common campaign practices as
9 evidence of wrong-doing on the campaign.

10 In addition, Mr. DeLacy will discuss during
11 his opening statement, number one, the OGC's reliance
12 on the discredited testimony from a flawed witness,
13 Sam Kazran, testimony that is directly contradicted
14 and called into question by exculpatory information
15 we received during the last 48 hours, and two, the
16 lack of corroboration for Mr. Kazran's testimony.

17 The OGC has failed to meet its burden that
18 Congressman Buchanan instructed Mr. Kazran or any
19 other business partners to reimburse their employees
20 for their campaign contributions or that Congressman
21 Buchanan or the campaign knowingly accepted such
22 contributions. The only burden the OGC has

1 apparently satisfied is that Sam Kazran, on his own,
2 by his own admission, used Hyundai of North
3 Jacksonville funds to reimburse his employees for
4 their contributions to the campaign.

5 In addition, Mr. DeLacy will explain during
6 his presentation that Mr. Kazran has used the FEC
7 matter as leverage in his ongoing business dispute
8 with Congressman Buchanan and to try to stave off his
9 own financial decline. Put simply, Mr. Kazran is
10 trying to save himself by implicating Congressman
11 Buchanan.

12 For the reasons we will discuss during our
13 presentations, we respectfully request that the
14 Commission dismiss this matter and decline to find
15 probable cause. As stated in our reply brief, the
16 OGC's probable cause brief is a marvel of one-sided
17 advocacy. The developments of the last 48 hours
18 emphasize that. Significant and exculpatory
19 testimony and documents, testimony and documents in
20 OGC's possession are absent from their brief. The
21 OGC brief contorts common lawful campaign practices
22 as evidence of wrong-doing. It even mischaracterizes

1 the fact that the campaign is the party that brought
2 this matter to the Commission's attention by filing a
3 sua sponte submission that accurately described the
4 events at issue in this case. As you can see, we
5 have displayed examples of this exculpatory testimony
6 and documents that were not in the OGC's brief. This
7 testimony, from multiple sources, directly
8 contradicts OGC's theory of the case.

9 After OGC has invested two years and
10 countless resources into this investigation, the
11 volume of exculpatory evidence absent from their
12 brief is breath-taking. Here is a representative
13 sample of the exculpatory evidence that directly
14 refutes OGC's theory of the case, evidence missing
15 from their brief:

16 Sam Kazran, the primary witness the OGC
17 relies on in its brief admitted in response to
18 interrogatories submitted to the OGC in October 2009
19 that he is the only one who requested and authorized
20 the reimbursements to his employees who contributed
21 to the campaign. Tellingly, Mr. Kazran did not
22 identify Congressman Buchanan or anyone from the

1 campaign, a direct contradiction to the erroneous
2 allegations he made in his subsequent deposition.

3 Moreover, in response to question 27,
4 Mr. Kazran exclusively states that the only
5 individuals who have knowledge of the reimbursements
6 are Sam Kazran, Josh Farid, Gayle Lephart and Eric
7 Kazran. Once again, Mr. Kazran did not identify
8 Congressman Buchanan or anyone from the campaign,
9 another direct contradiction that goes to the heart
10 of this matter.

11 I wish to note for the record that we
12 received this exculpatory document disclosing this
13 information less than 48 hours before this hearing,
14 more than one month after we filed our probable cause
15 rely brief and months after two document requests
16 that covered this document.

17 Steven Silverio, former business partner of
18 Congressman Buchanan, testified on page 61 of his
19 deposition transcript that Congressman Buchanan never
20 quote alluded end quote to reimbursing dealership
21 employees for their contributions to the campaign.

22 John Tosch, another Buchanan automotive

1 executive, testified on page 36 of his deposition
2 transcript, that Congressman Buchanan and his
3 campaign engines did not suggest that his business
4 partner should raise funds for the campaign by
5 reimbursing employee contributions.

6 Dennis Slater, another Buchanan automotive
7 executive, testified on page 71 to 73 of his
8 deposition transcript that the reimbursement
9 allegations smell like retribution rather than fact.
10 He goes on to testify that such tactics are not
11 uncommon in the auto dealership culture.

12 Joe Gruder, the Buchanan campaign's
13 political director and current campaign treasurer
14 testified on pages 92 to 93 of his deposition
15 transcript that Congressman Buchanan's compliance
16 instructions were to comply with the law and not even
17 approach the gray areas.

18 The omission of this exculpatory evidence
19 vitiates the credibility of the OGC's case, even
20 before today's developments. It is important to note
21 that the exculpatory evidence cited in our reply
22 brief and this presentation is sourced to the limited

1 amount of testimony and documents to which we were
2 granted access by the OGC. The recent revelation of
3 Kazran's interrogatories and today's letter gives
4 rise to the question of whether there is additional
5 exculpatory evidence contained in the testimony,
6 interview notes, documents, or other evidence in the
7 OGC's possession that was not cited in its brief or
8 provided to us.

9 In addition, OGC is the only party that has
10 taken discovery in this matter. We have had not an
11 opportunity to depose any witnesses, including those
12 referenced in our brief or subpoena documents. This
13 means that the OGC brief represents its best argument
14 due to the one-sided nature of FEC enforcement
15 actions.

16 If you find probable cause, which you should
17 not, and this matter goes to Federal Court, we will
18 have our opportunity to depose witnesses and subpoena
19 documents. Moreover, we will finally learn the
20 identity of each witness or additional respondent in
21 this matter who was deposed, interviewed or contacted
22 by the OGC and its investigators. This may include

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1 discovery regarding the communications between OGC
2 and Mr. Kazran throughout the course of this
3 investigation, a pertinent topic in light of
4 Mr. Kazran's threatened state lawsuit against
5 Congressman Buchanan and the campaign regarding
6 Mr. Kazran's potential FEC penalty and Mr. Kazran's
7 allusions to his interactions with the OGC on this
8 subject.

9 The OGC brief also spends countless pages
10 mischaracterizing common campaign practices as
11 evidence of wrong-doing. OGC's attempts to paint the
12 following activities as questionable or inappropriate
13 are unveiling. First, the OGC erroneously cites
14 campaign refunds as evidence of wrong-doing. When
15 the campaign received information that certain
16 contributions from Sun Coast Ford employees may have
17 been reimbursed, the campaign refunded the
18 contributions in accordance with Commission
19 regulations. This conduct serves as evidence that
20 the campaign sought to comply with the Act and
21 Commission regulations. It is not evidence of
22 wrong-doing.

1 Second, it is both legal and common for a
2 federal candidate to solicit his or her business
3 partners for contributions.

4 Third, seeking assistance from a small group
5 of supporters to solicit contributions from their
6 friends families and colleagues is common practice
7 employed by federal candidates of both political
8 parties.

9 Fourth, tracking contributions and focusing
10 on quarterly or even per-event fundraising totals is
11 lawful activity and is not unusual. It certainly
12 does not suggest illegal conduct.

13 Finally, a federal candidate's decision to
14 raise contributions from many individuals instead of
15 self-financing his campaign with his own personal
16 funds is not only proper, it is preferable, for
17 obvious reasons. OGC's attempt to use this decision
18 as evidence of wrong-doing demonstrates the weakness
19 of their case.

20 Thank you for this opportunity. I look
21 forward to answering your questions. I will turn the
22 presentation over to my colleagues, Christopher

1 DeLacy.

2 MR. DELACY: Thank you, Mr. Chairman, Madam
3 Vice Chair, members of the Commission, my name is
4 Chris DeLacy. I am a partner at Holland & Knight and
5 I represent Congressman Vern Buchanan in this matter.

6 Thank you for allowing Mr. McGinley and
7 myself to appear before you today. I value this
8 opportunity to direct to speak directly to you
9 instead of through the filter to the Office of
10 General Counsel.

11 I am very concerned about the direction of
12 this case and have been for some time. The activity
13 this morning vividly illustrates why I have been so
14 concerned. At its core, this is matter is about Sam
15 Kazran and whether he is to be believed. There are
16 lots of other bit players in this drama, but only
17 Mr. Kazran claims to have the full story.

18 Quite simply, without Mr. Kazran, OGC has no
19 case and for the reasons I am about to explain he is
20 not a credible witness. Accordingly, I urge the
21 Commission to reject Mr. Kazran's testimony and
22 dismiss this case.

1 The General Counsel's brief makes clear that
2 OGC continues to believe Mr. Kazran's tale, despite
3 some very ominous warning signs. Even a cursory
4 review of public documents in Florida and Georgia
5 reveals that Mr. Kazran is a deeply-flawed witness.
6 He filed for bankruptcy in both states in 2008 and in
7 Georgia he was jailed by a judge for contempt of
8 court. Mr. Kazran has still not repaid a \$2.5
9 million loan from Congressman Buchanan and the funds
10 appear to have been embezzled.

11 All of this information is a matter of
12 public record and was available to OGC. Either OGC
13 did not perform due diligence on Mr. Kazran or it
14 ignored what it found. Even if OGC inexplicably did
15 not look Mr. Kazran's background, they are very aware
16 of Mr. Kazran's behavior during this investigation.
17 Mr. Kazran admitted under oath to violations of
18 441(f) totaling approximately \$68,000. In October of
19 this year he threatened to make details of this case
20 public, in violation of the confidentiality
21 provisions contained in FECA.

22 Most troubling, Mr. Kazran recently stated

1 that he strongly disagrees with portions of OGC's
2 case. Unfortunately, OGC does not share Mr. Kazran's
3 skepticism.

4 While OGC applied relentless pressure to
5 other witnesses in this matter, Mr. Kazran was
6 handled with kid gloves. Mr. Kazran's deposition
7 transcript is almost devoid of probing questions from
8 OGC and it appears Mr. Kazran never produced
9 documents. Most of the documents cited in the
10 General Counsel's brief were provided either by the
11 campaign or by John Tosch, which is odd given the
12 important documents Mr. Kazran and his car
13 dealerships would presumably possess in this matter.

14 Even more bizarre, Mr. Kazran implied in a
15 letter that he was working with OGC to negotiate a
16 civil penalty for Congressman Buchanan to pay on
17 behalf of Mr. Kazran. When Mr. Kazran threatened to
18 make information about this matter public, OGC
19 indicated they did not oppose Mr. Kazran's actions
20 because in their opinion this disclosure would not
21 violate FECA's confidentiality provisions. OGC's
22 position on Mr. Kazran's threatened disclosure stands

1 in stark contrast to the strict confidentiality
2 warnings administered to all other witnesses in this
3 case.

4 Despite his promise under oath that other
5 witnesses would corroborate his story, as our reply
6 brief makes clear, Mr. Kazran's version of events is
7 contradicted by the other key witnesses in the case,
8 Dennis Slater, Steven Silverio, David Long, John
9 Tosch and Congressman Buchanan. Even Sal Rosa
10 questioned Mr. Kazran's truthfulness. Yet, instead
11 of objectively re-evaluating this case, once it was
12 clear Mr. Kazran's story was not supported by other
13 witnesses, OGC attempted to rehabilitate him. OGC
14 cherry-picked testimony to fit their theory of the
15 case and obtained affidavits from other witnesses in
16 an attempt to bolster Mr. Kazran's credibility. OGC
17 appears to be the only party that believes
18 Mr. Kazran.

19 Most incredibly, Mr. Kazran refutes his own
20 testimony. In item 27 of Hyundai of North
21 Jacksonville's response to the Commission subpoena
22 and order, Mr. Kazran lists only himself as approving

1 the reimbursed contributions. Congressman Buchanan
2 is not listed as either approving the reimbursed
3 contributions or being aware of the reimbursed
4 contributions. This is consistent with almost every
5 other witness in this matter except Mr. Kazran
6 himself in his deposition transcript. Either
7 Mr. Kazran perjured himself in this sworn statement
8 or he did in his deposition because his statements
9 cannot be squared.

10 More recently, on October 18, 2010,
11 Mr. Kazran stated that he strongly disagrees with
12 some of the allegations made by OGC in this matter.
13 Mr. Kazran clearly has a very complicated
14 relationship with the truth.

15 As our reply brief points out, there are no
16 firsthand witnesses other than Mr. Kazran and
17 Congressman Buchanan. Josh Farid, Kenneth Leibarger
18 and Gayle Lephart are all presented by OGC as
19 corroborating witnesses, but they actually have no
20 firsthand knowledge about any relevant conversations
21 between Mr. Kazran and Mr. Buchanan. At best, these
22 witnesses heard one-half of a phone conversation.

1 Mr. Leibarger even submitted a supplemental
2 affidavit, making clear he had no relevant,
3 first-hand knowledge.

4 Accordingly, this case ended where it began,
5 with the testimony of Mr. Kazran. Despite
6 Mr. Kazran's false testimony and OGC's
7 unsubstantiated theories, the record clearly shows
8 that Congressman Buchanan played no role in Mr.
9 Kazran's reimbursement scheme other than his
10 campaigns unwitting receipt of the illegal
11 contributions.

12 As the Commission is aware, once Mr.
13 Kazran's actions were discovered, the campaign came
14 forward, voluntarily disclosed the information to the
15 Commission and placed the funds in an escrow account.
16 But for the campaign's sua sponte admission, it is
17 unclear if this matter would have ever come to the
18 attention of OGC.

19 Mr. Kazran and Congressman Buchanan once had
20 a friendly and mutually beneficial business
21 relationship. Based on this relationship, when Mr.
22 Buchanan ran for Congress, Mr. Kazran supported him

1 by contributing to his campaign and raising money on
2 his behalf. However, when Mr. Kazran's business
3 ventures began to fail in 2008, he desperately
4 attempted to prevent Congressman Buchanan from filing
5 a lawsuit to collect on a \$2.5 million loan.

6 Mr. Kazran attempted to prevent the lawsuit by
7 threatening to publically disclase the fact that he
8 had illegally reimbursed campaign contributions to
9 Congressman Buchanan's campaign. Mr. Kazran made
10 this threat less than three months before the 2008
11 general election.

12 Faced with this information Congressman
13 Buchanan chose to file the lawsuit and self-report to
14 the Commission despite the political damage
15 Mr. Kazran's false accusations might cause.
16 Mr. Kazran's clumsy attempt to leverage Mr.
17 Buchanan's status as a member of Congress was
18 repeated again in October 2010. This time Mr. Kazran
19 threatened to file a state lawsuit that would
20 disclose confidential information related to this
21 case five days before the general election if his
22 demands were not met.

1 In addition to Mr. Kazran's dire financial
2 situation, he also faces significant legal issues.
3 The record shows Mr. Kazran admitted to reimbursing
4 campaign contributions totaling approximately \$68,000
5 in violation of federal law. He testified that at
6 least some of his violations were knowing and
7 willful. Accordingly, Mr. Kazran's testimony must be
8 viewed with skepticism as he clearly has a motivation
9 to lie in an attempt to deflect legal responsibility
10 for his actions.

11 OGC should have exercised better judgment
12 than to rely so completely on a obviously biased and
13 unreliable individual. While we don't know precisely
14 when, based on the letter provided this morning, it
15 appears OGC was warned early on not to trust Mr.
16 Kazran. Evidently, OGC did not heed this advice.

17 In the General Counsel's brief OGC
18 highlighted testimony that fit their theory of the
19 case while ignoring other testimony that called into
20 question Mr. Kazran's credibility. Presumably
21 worried that Mr. Kazran would not stand up to
22 scrutiny, OGC obtained affidavits from other

1 witnesses in an attempt to bolster Mr. Kazran's
2 credibility. In the end, it didn't work.

3 Even a cursory review of the record in this
4 case leads to the conclusion that Mr. Kazran is not
5 to be believed. Congressman Buchanan and his
6 campaign had no role in or knowledge of Mr. Kazran's
7 admitted illegal activity until long after the fact
8 and there is no credible evidence to the contrary.
9 By self-reporting this matter Congressman Buchanan
10 had faith that the Commission would see Mr. Kazran
11 for who he really is. Accordingly, I urge the
12 commission to dismiss this case and not find probable
13 cause in this matter.

14 I look forward to answering any questions.
15 Thank you.

16 CHAIRMAN PETERSEN: Thank you very much for
17 those opening statements. I now open it up to the
18 Commission for questions.

19 Mr. Walther?

20 COMMISSIONER WALTHER: Thank you for being
21 here. I take to heart your criticism in many ways,
22 but to ask some questions about the credibility

1 issue, as I understand it, there is no dispute that
2 the Congressman knew it was illegal to make
3 reimbursements. I gather in his deposition it was
4 sufficiently clear. There is no question of fact
5 about his state of knowledge about the law.

6 MR. DELACY: That is correct. He never
7 asserted he was unaware it was illegal.

8 COMMISSIONER WALTHER: There is no doubt
9 that reimbursements were made by Kazran. There is no
10 doubt about that. So we have two questions that are
11 resolved. The question is what did the Congressman
12 know and when did he know about it and what did he do
13 about it, I guess is the third part.

14 Setting aside Kazran for a second, do you
15 have any reason to believe or any reason to believe
16 that the testimony of Rosa should not be given
17 credibility? As I understand he testified -- first
18 of all, you shouldn't believe Kazran, but he advised
19 Buchanan that it was illegal to take reimbursements
20 and Buchanan said, something like, finesse it. I
21 would like to have your comment on that issue.

22 MR. DELACY: I think when it comes to

1 Mr. Rose, it is important to understand he has not
2 worked for Mr. Buchanan for approximately eight
3 years. The activity that Sal Rosa claims to have
4 information regarding is I believe related to a
5 campaign in 2003. It was a long time ago. We don't
6 believe that Sal Rosa is a credible witness. We
7 believe he is biased. We have serious questions as
8 to why he was even included given the fact that he
9 had no direct relevant knowledge, but as far as his
10 allegations, I would point out they were made -- he
11 is talking about conduct from a long time ago and
12 none of the issues that are in dispute in this
13 matter -- in all cases Sal Rosa has no knowledge of
14 those issues at all.

15 COMMISSIONER WALTHER: I understand that in
16 the Buchanan deposition he said he may have said
17 something in passing along that line. How do you see
18 that?

19 MR. DELACY: I think a phrase, to tell
20 somebody to finesse something, if Mr. Buchanan even
21 said that, I don't think we know for sure, can be
22 interpreted in different ways. It is certainly

1 likely that Sal Rosa would interpret a statement like
2 that differently than the Congressman would.

3 COMMISSIONER WALTHER: With respect to
4 Kazran, what motive did he have to make those
5 reimbursements at that time? It came out of both
6 pockets, as I understand it, and as I understand it,
7 there was a point in time they were getting along or
8 more than that, they were communicating civilly.
9 Here he is getting reimbursements. He is doing this.
10 He knows it is coming out of both pockets. He would
11 know it would come out sooner or later. What reason
12 would he have to do that?

13 MR. DELACY: We don't know, but maybe he
14 wanted to please Congressman Buchanan, do a good job
15 raising funds and it seems like, as in other cases,
16 people get into trouble when they over-commit or they
17 are unable to deliver on raising contributions, but
18 we really don't know what Sam Kazran was thinking.
19 Obviously, he wasn't thinking very clearly when he
20 did what he did, but I don't think the record really
21 shows sheds much light on what his motivations are.

22 COMMISSIONER WALTHER: We have an affidavit

1 from, I think it was, where Lephart asked Kazran, why
2 are you doing this or something to this effect, and
3 he said, Buchanan told me to do it. Would Lephart be
4 a credible person?

5 MR. DELACY: She is testifying or she is
6 providing information as to what Sam Kazran told her.
7 That may be accurate. It is hard to know. But I
8 think it is important to point out that she never
9 testified that she heard Congressman Buchanan or
10 anyone who worked for Congressman Buchanan make a
11 statement like that.

12 COMMISSIONER WALTHER: She cleared up that
13 issue.

14 MR. DELACY: Right. She reported what Sam
15 may have told her and I can't say whether Sam said
16 that or not. I don' know.

17 COMMISSIONER WALTHER: Thank you for your
18 time. I will turn it over for other questions.

19 CHAIRMAN PETERSEN: If no one else has any
20 right at this moment, let me ask a couple of
21 questions. Can you provide a few additional details,
22 kind of flush out the \$2.5 million loan that was made

1 from Congressman Buchanan to Mr. Kazran which then
2 gave rise to many of these problems. You mentioned
3 it appears there may have been actual embezzlement.
4 Can you flesh out the details of that loan and the
5 aftermath and how that resulted in much of what is
6 going on here in terms of the disputes between
7 Mr. Kazran and Mr. Buphanan?

8 MR. DELACY: Sure. I would be happy to.
9 Originally Congressman Buchanan was a business
10 partner with Sam Kazran. They were partners in
11 Hyundai of North Jacksonville. At a certain point I
12 believe Sam felt he was doing very well with the
13 business and he approached Congressman Buchanan about
14 buying out his share of the dealership. Mr. Kazran
15 stated a desire to be a majority partner and to buy
16 Mr. Buchanan's share. At which point this dovetailed
17 pretty nicely with the Congressman's decision to
18 divest of a lot of these dealership partnerships that
19 he was a part of it. So he agreed to Sam's request.
20 At the time I believe he felt that Sam had been a
21 good partner and had been a successful businessman
22 and he felt comfortable turning over his share of the

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1 business to Mr. Kazran, and for a variety of reasons,
2 instead of pursuing a commercial loan, and I am not
3 sure exactly why that was, but it may have something
4 to do with Mr. Kazran's record with the bank,
5 Mr. Buchanan personally loaned him \$2.5 million to
6 buy out his share. So at this point Mr. Buchanan
7 transitioned from being a partner in this dealership
8 to essentially being a lender, the same as a bank,
9 would own title for a home that someone is paying a
10 mortgage for.

11 So his role transitioned part way through
12 the time period we are talking about here, and it
13 also coincided with a downturn in the auto industry.
14 So Mr. Kazran was not able to make payments on this
15 loan. In addition to Hyundai of North Jacksonville,
16 he had a number of other dealerships. All of them
17 began to suffer financial hardship. It appears he
18 had trouble with liquidity. That may or may not have
19 led to the alleged embezzlement in this case, but the
20 Ira Silver affidavit, which we provided, details what
21 happened with the money. It was contrary to the loan
22 agreement, it was transferred from the original

1 intended purpose to a dealership I believe in
2 Georgia.

3 So that is the basic fact pattern as to how
4 the loan came about. In retrospect it was obviously
5 a poor decision to personally loan Mr. Kazran this
6 money, but based on the previous good relationship
7 and based on Mr. Kazran's business success up to that
8 point, I believe Congressman Buchanan felt
9 comfortable making this loan. Obviously that was a
10 mistake in hindsight.

11 CHAIRMAN PETERSEN: You mentioned there may
12 have been embezzlement in this matter. What evidence
13 is there of a potential embezzlement? Was there an
14 investigation into that? What can you tell us about
15 that?

16 MR. DELACY: I would direct you to the Ira
17 Silver affidavit which is in the bankruptcy case.
18 And in that affidavit he references discussions he
19 had with individuals affiliated with Mr. Kazran,
20 including Gayle Lephart. She is included in the
21 affidavit, his discussions with her. Also John Tosch
22 in his deposition testified to the fact that he

1 believed the money was embezzled. So those are the
2 two sources of information we have for that
3 allegation.

4 CHAIRMAN PETERSEN: Ms. Weintraub?

5 MS. WEINTRAUB: Thank you Mr. Chairman, and
6 thank you, gentlemen, for coming in for
7 presentations. Mr. McGinley, you brought up the Sun
8 Coast reimbursements and you accurately state that
9 they were returned and that was appropriate for the
10 campaign to do. But I think that the point that the
11 brief was trying to make was the campaign was
12 obviously aware that there were reimbursements not
13 only at Jacksonville North Hyundai but also at Sun
14 Coast, so you knew about it because you returned the
15 money. So when you submitted your sua sponte, why
16 did you choose to only focus on Jacksonville and not
17 mention these other dealers?

18 MR. MCGINLEY: Number one, the reimbursed
19 contributions from Hyundai North Jacksonville were
20 the most recent disclosure. Given that a complaint
21 had just been filed by CREW against the campaign in
22 connection with the Venice Beach Dodge dealership, we

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1 wanted to bring this to the attention of the
2 Commission so that you understood all of the
3 outstanding issues that we had. The Sun Coast Ford
4 contributions, as you stated, once the campaign
5 learned, were refunded within the appropriate period
6 of time. It was entirely lawful activity. There was
7 no connection between the Sun Coast Ford or the
8 Hyundai North Jacksonville contributions. That is
9 why it was not included in the sua sponte submission.
10 It was basically a completely different fact pattern
11 where the Commission had already refunded this.

12 If you recall, in our sua sponte submission,
13 we asked for guidance from the Commission. We stated
14 this has recently come to light, it came to light
15 during commercial litigation, we have investigated,
16 we provided copies of the checks, we provided copies
17 of the FEC report, we said, we don't believe people
18 who have engaged in this type of activity should
19 profit it and you should basically disclose to us
20 where you would like us to refund those
21 contributions, should we send it to the treasury,
22 because we didn't think it was appropriate to send it

1 back to those individuals at that time. That was the
2 purpose of this sua sponte submission.

3 We could have just refunded them, but we
4 wanted to bring it to your attention because of the
5 recent disclosure and the ongoing complaint filed by
6 CREW and that is why we didn't do it.

7 MS. WEINTRAUB: As you point out there was
8 also a complaint against Venice Nissan, which has
9 already been conciliated, but that is three different
10 dealerships in which Mr. Buchanan has an ownership
11 interest where there were reimbursed contributions.
12 Should we be suspicious as to how it happened, do you
13 have a theory as to how it happened, that all these
14 different business entities -- there seems to have
15 been a pattern of activity going on.

16 MR. MCGINLEY: Number one, I don't want to
17 speculate as to the motivation of the people who
18 engaged in this activity. What I can point out to
19 you is that we have Mr. Kazran's written response to
20 the interrogatories from the Commission. What is
21 important to note here is in question 27, where it is
22 explicitly asked, identify all persons with knowledge

1 of such reimbursement or compensation, Mr. Kazran on
2 behalf of Hyundai North Jacksonville, lists four
3 individuals: Sam Kazran approved the use of, Josh
4 Farid was aware, Gayle Lephart was aware, Eric Kazran
5 was aware. Nowhere in this document does he identify
6 Congressman Buchanan having knowledge of this or any
7 agent of the campaign having knowledge of what he did
8 in the reimbursement.

9 I would also direct your attention to
10 questions six through 23, where it identifies each of
11 the individuals that we included in the sua sponte
12 submission and asks number one, who requested the
13 reimbursement; number two, who approved the
14 reimbursements and in each instance Kazran lists
15 himself. He doesn't list Congressman Buchanan. He
16 doesn't identify anybody from the campaign.

17 In that type of circumstance how would we
18 know there is a pattern? We find this out -- and it
19 has been done outside of the knowledge of the
20 campaign. Let's remember that 441(a)(f) and 441(f)
21 require knowledge. This document demonstrates that
22 Kazran was the only one that engaged in this

1 activity, he is the only one that requested it, he is
2 the only one who approved it, and he identifies the
3 individuals who have knowledge of these types of
4 transactions.

5 MS. WEINTRAUB: My question is a little bit
6 broader than that because I understand you spend a
7 lot of time talking about Mr. Kazran and deficiencies
8 in his testimony, but my question is, is this
9 something the Commission ought to be concerned about
10 when we see three different business entities under
11 the ownership and control of the same individual who
12 is running for Congress and in three separate
13 business entities -- Kazran didn't control what
14 happened at Sun Coast. Kazran didn't control what
15 happened at Venice Nissan. But we are seeing the
16 reimbursements happen at these separate entities.

17 MR. DELACY: I think it is important to
18 point out a couple of items here: Number one, I
19 believe Mr. Scarborough's testimony regarding Sun
20 Coast was that it was a mistake. I think he believed
21 he could engage in the activity that occurred there.
22 Once it was discovered that he couldn't, he took

1 steps to resolve the situation. In the case of
2 Venice, as you know, there was never any admission of
3 guilt in that matter. It is not exactly the same --
4 it is not at all the same as what we see at Hyundai
5 North Jacksonville, where there is an admission of
6 guilt.

7 And then, finally, clearly OGC looked at
8 this case early on and said, there is a pattern here,
9 we need to look into all these dealerships and while
10 we don't know everyone they talked to because they
11 won't tell us, clearly they cast a pretty wide net,
12 but in the end this case narrowed to Hyundai North
13 Jacksonville and Sam Kazran. It started out very,
14 very live, and I think it is telling that we ended up
15 here, pretty much with one dealership and one
16 individual involved in reimbursed contributions. So
17 I think that is a very telling statement as to the
18 actual facts in this case.

19 CHAIRMAN PETERSEN: Commissioner Hunter?

20 COMMISSIONER HUNTER: Thank you for coming
21 today. I want to ask you a quick question on page 29
22 of OGC's brief. There are allegations that Buchanan

1 demanded that Kazran sign a false affidavit about the
2 reimbursements. I wonder if you could describe that
3 going back and forth.

4 MR. DELACY: I would be happy to. First of
5 all, I would like to point out, based on item 27 in
6 the interrogatories that we were given two days ago,
7 it doesn't appear that the affidavit was false at
8 all. The affidavit is completely consistent with
9 Mr. Kazran's own sworn statement and it is consistent
10 with every other witness's testimony in this case.

11 Second, it is a little strange to call
12 something a false affidavit when it is not signed.
13 It is called a draft affidavit. The person signing
14 it is the one that has to ensure that it is accurate.
15 To say it is false, I think, is misleading.

16 But to describe the circumstances where it
17 was arrived -- where we arrived at the draft
18 affidavit, it was during the settlement negotiations
19 regarding this business loan, this \$2.5 million loan,
20 Mr. Buchanan sent a demand letter to Mr. Kazran
21 demanding that he repay the loan. Mr. Kazran's
22 response was the e-mail to John Tosch alleging the

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1 illegal campaign contribution reimbursements. As we
2 know, a lawsuit was filed regardless of Mr. Kazran's
3 threat. The sua sponte was submitted to the
4 Commission, and in the course of attempting to settle
5 this litigation, it was discussed with Mr. Kazran,
6 since everyone was confident his allegations were
7 false, the goal for the attorneys settling the case
8 was to remove that as an issue going forward. He had
9 demonstrated his willingness to use it as a club
10 against Mr. Buchanan. It was clearly false. So the
11 idea was to remove that as an issue going forward in
12 settling this business dispute.

13 That was the idea behind the draft affidavit
14 and just to reiterate, calling it a false affidavit,
15 particularly after the document we received two days
16 ago, I don't think is appropriate.

17 CHAIRMAN PETERSEN: Any questions?

18 Commissioner Walther?

19 COMMISSIONER WALTHER: I have a question on
20 that. What was the role of Mr. Schmidt in Sun Coast?
21 He was the auditor for Mr. Buchanan's actual
22 company -- who was he?

1 MR. DELACY: I know the name. I am not sure
2 exactly. I believe Sun Coast Ford issues or --
3 excuse me --

4 COMMISSIONER WALTHER: That is where the
5 contributions were refunded. He said, you can't do
6 that. Then shortly after that, things happened and
7 the refund was made. I was wondering what position
8 did he have?

9 MR. DELACY: I believe he is an outside
10 auditor. I am fairly confident he is an accountant.
11 He may have been working for the Buchanan Automotive
12 Group. Part of the routine audit of the dealerships,
13 he discovered this transaction, questioned it, and
14 that is when Mr. Scarborough explained what happened,
15 it was determined it was not appropriate and that is
16 when the refunds were made.

17 COMMISSIONER WALTHER: Do you know what
18 range of authority did he have in the overall scheme
19 of Mr. Buchanan's finances?

20 MR. DELACY: I don't know. My understanding
21 is these audits were routine and they happened fairly
22 often because there is a great deal of autonomy at

1 these dealerships. The on-site business partner
2 essentially has authority to write checks for
3 whatever they want and Buchanan Automotive insists on
4 these audits to make sure there is nothing improper
5 happening, making sure the taxes are paid and so
6 forth. My understanding is this is a routine
7 activity but I don't have specific details as to how
8 often or what authority he had.

9 CHAIRMAN PETERSEN: Further questions?
10 General counsel?

11 MR. HUGHEY: Mr. Chairman, we don't have any
12 questions.

13 CHAIRMAN PETERSEN: Commissioner Hunter?

14 COMMISSIONER HUNTER: This is not a question
15 in particular, but I just want to state globally,
16 this case has presented a lot of issues as you well
17 know to the Commission throughout and we have
18 wrestled with a lot of different issues as to what
19 kind of information to share with counsel, whether it
20 is what we call pre-RTB letters or here and now. The
21 issue about the exculpatory evidence is obviously
22 troubling and I apologize for having to deal with

1 this at the last minute like this.

2 I personally want to state in the record, as
3 I did at the last probable cause hearing that we had
4 that I am prepared to vote against the OGC's
5 recommendation in this matter and would be prepared
6 to do so at this point. The only reason I am
7 reluctant to call for a vote or ask that it happen is
8 perhaps it is possible in light of the oral argument
9 and other information that may come to light, maybe
10 OGC will amend their recommendation. I don't know
11 exactly how that works but that is the reason I don't
12 want to specifically call this for a vote at this
13 time.

14 Thank you.

15 CHAIRMAN PETERSEN: Commissioner Weintraub?

16 MS. WEINTRAUB:

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21 MR. MCGINLEY: Yes.

22 MR. DELACY:

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CHAIRMAN PETERSEN: Commissioner Hunter?

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COMMISSIONER HUNTER: Which reminds me of

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another interest,

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Thank you.

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CHAIRMAN PETERSEN: Anything further from

1 the Commission?

2 I don't know if you declared -- would you
3 like to reserve time to make a closing statement, but
4 if you would like to do so, you may do so now.

5 MR. MCGINLEY: I will keep this short.

6 Based upon the evidence that we have discussed today,
7 our position is that the Commission must dismiss this
8 matter and decline to find probable cause. The
9 volume of exculpatory evidence, especially
10 Mr. Kazran's exculpatory statements submitted to the
11 OGC in October 2009 and not to mention the
12 exculpatory evidence we were presented with today,
13 that further call into his question his credibility,
14 leads to only one conclusion, that this matter should
15 be dismissed.

16 We would also like to say, and I understand
17 the statements just made by some on the Commission,
18 as we stated in our cover letter to the reply brief
19 that we submitted, if the OGC continues to seek
20 probable cause from the Commission, and there are any
21 changes to the allegations, the arguments or the
22 evidence cited in the final brief submitted to the

1 Commission by the OGC, we believe we must be granted
2 an opportunity to review those changes and submit
3 a supplemental brief. Failure to do so would raise
4 serious due process and fairness issues.

5 And so with that, we respectfully urge the
6 Commission to dismiss this matter and find no
7 probable cause against both the campaign and
8 Congressman Buchanan.

9 Mr. DeLacy?

10 MR. DELACY: Thank you, Mr. McGinley.

11 A couple of housekeeping items I just wanted
12 to get into the record. One is the letter we were
13 provided this morning that provided an overview of
14 some of the testimony of the witnesses, all we
15 received was an overview and this overview was
16 provided by OGC. Given the history of this case, we
17 would like to formally request an opportunity to see
18 the source documents, the interview notes, the
19 investigator notes, we would like to formally request
20 that. At a minimum, we would like to know the dates
21 of the interviews. That was not provided in the
22 letter. We believe it would be very helpful to know

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1 when those interviews were conducted and then I would
2 like to make a broader request and just follow-up on
3 the request that I made in writing to OGC twice in
4 October where I asked for any other depositions,
5 interview notes, documents or other evidence
6 including exculpatory evidence used to prepare the
7 brief, that will be used in the final version of the
8 brief, that will be shown to the Commissioners or
9 otherwise obtained during this investigation.

10 The interrogatory answers that we did not
11 receive until two days ago clearly falls within this
12 catch-all category. If there is anything else that
13 we requested, we would like to be provided with this
14 information and so I just wanted to formally make
15 that request on the record.

16 Other than that, I don't have any other
17 closing statements except to say that despite
18 appearances, this case is about one individual, it is
19 about Sam Kazran and I think we have demonstrated
20 with an abundance of evidence that he is not to be
21 believed. I think that the procedural irregularities
22 in this case alone cry out for dismissal, but we are

1 confident on the facts here. We believe the facts
2 are on our side and more importantly, the facts cry
3 out for dismissal in this case, so that is what I
4 would formally request and respectfully request.

5 Thank you.

6 CHAIRMAN PETERSEN: Thank you, Mr. DeLacy
7 and Mr. McGinley, for being here, for your testimony,
8 for the documents and the submission that you have
9 made before the Commission and with that, this
10 meeting is adjourned.

11 (Whereupon, at 12:28 p.m., the hearing was
12 adjourned.)
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1 CERTIFICATE OF REPORTER
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4 I, CATHY JARDIM, the officer before whom the
5 foregoing testimony was taken, do hereby testify that
6 the testimony of witnesses was taken by me
7 stenographically and thereafter reduced to a
8 transcript under my direction; that said record is a
9 true record of the testimony given by the witness;
10 that I am neither counsel for, nor related to, nor
11 employed by any of the parties to the action in which
12 this testimony was taken; and further, that I am not
13 a relative or employee of any attorney or counsel
14 employed by the parties hereto nor financially or
15 otherwise interested in the outcome of the action.

16
17
18 CATHY JARDIM
19
20
21
22

PROBABLE CAUSE HEARING IN RE: MUR 6045

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